

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**BOARD OF TRUSTEES SHEET METAL
WORKERS' NATIONAL PENSION FUND,
*et al.***

Plaintiffs,

v.

NEW YORK CHUTES, LLC,

Defendant.

Case No. 1:22-cv-1294-PTG-WEF

DECLARATION OF ERIC MESLIN

1. I, Eric Meslin, submit the following declaration.

2. I am the President and Business Manager for Local Union No. 28 of the International Association of Sheet Metal, Air, Rail and Transportation Workers, formerly known as the Sheet Metal Workers' International Association ("Local 28"). I have been Local 28's Business Manager since July 1, 2019.

3. I am familiar with the facts and circumstances set forth in this declaration and I have reviewed Local 28's records to provide this testimony.

4. Local 28 negotiated a collective bargaining agreement with the Sheet Metal & Air Conditioning Contractors Association of New York City, Inc. and SMACNA of Long Island, Inc. (collectively, "SMACNA") effective for the period of August 1, 2014 through July 31, 2017 ("2014 CBA"). NY Chutes executed a Memorandum of Understanding binding them to the 2014 CBA.

5. Local 28 and SMACNA entered into a Memorandum of Agreement modifying and extending the terms of the 2014 CBA through July 31, 2020 ("2017 CBA"). Local 28 and SMACNA then agreed to extend the 2017 CBA through October 31, 2020. SMACNA and Local

28 then negotiated a successor agreement effective for the period of November 1, 2020 through October 31, 2021 (“2020 CBA”).

6. It is Local 28’s position that NY Chutes was bound to the 2017 and 2020 CBAs.

7. NY Chutes sent a letter to Local 28 on December 29, 2021 serving as its “official request to withdraw from the SMW Union Local 28 effective December 31, 2021.” Accordingly, NY Chutes was bound to the CBAs with Local 28 for the period of October 6, 2015 through December 31, 2021. A true and accurate copy of this letter is attached hereto as Exhibit 1.

8. At times while the 2017 and 2020 CBAs were in effect, according to the Union’s records, NY Chutes paid working assessments on behalf of its covered employees.

9. Additionally, according to the Union’s records, NY Chutes reported covered hours worked by various employees during the period March 2019 through July 2019. A true and accurate copy of NY Chutes’ reported work history to Local 28 is attached hereto as Exhibit 2.

10. NY Chutes complied with a payroll audit conducted by the National Benefit Funds and the Sheet Metal Workers’ Local Union 28 Benefit Funds (the “Local Funds”). Local 28 received a copy of the audit findings reflecting that NY Chutes contributed to the Local Funds for covered employees in certain months but failed to report certain covered hours associated with the Wilkinson Hi-Rise Job. The audit also revealed that NY Chutes owed additional amounts as a result of using non-union subcontractors to perform work under the jurisdiction of the CBAs. A true and accurate copy of the audit findings as to the Local Funds is attached hereto as Exhibit 3.

I have read this declaration in its entirety. Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on 7/19/23.

Eric Meslin
Eric Meslin

EXHIBIT 1

New York Chutes LLC
P.O. Box 234
Lebanon, NJ 08833
973-568-1588
nychutes@gmail.com

December 29, 2021

Sheet Metal Workers' Local Union No. 28
500 Greenwich Street
New York, NY 10013
Attn: Teri

Please accept this letter as our official request to withdraw from the SMW Union Local 28 effective December 31, 2021. We have had no Union work since 2019, and do not expect any going forward; we do not wish to continue reporting **zero hours** on a weekly basis.

As such, please refund our \$15,000 security deposit (see attached receipt).

Thank you for your prompt attention in this matter.

Sincerely,


James Fox, Director

EXHIBIT 2

NY CHUTES

Work History reported for 2017-PRES as of 7/18/2023

Work Date	Worked (Hrs)	Paid (Hrs)	Employee	Labor Category	Job Class	Contact Status	Collected	Entered By	Entered On	Request	Locked	Finalized	Status
07/31/2019	8	8	BUTLER, RYAN J (970073)		Journey person		\$0.00	Unknown	09/23/2019	7/25/2019 - 7/31/2019	8/8/2019	Yes	Paid
07/31/2019	8	8	RODRIGUEZ, ALVIN (753271)		Journey person		\$0.00	Unknown	09/23/2019	7/25/2019 - 7/31/2019	8/8/2019	Yes	Paid
06/05/2019	2	2	JONES, RODNEY (809004)		Journey person		\$0.00	Unknown	09/23/2019	5/30/2019 - 6/5/2019	6/18/2019	Yes	Paid
06/05/2019	8	8	BUTLER, RYAN J (970073)		Journey person		\$0.00	Unknown	09/23/2019	5/30/2019 - 6/5/2019	6/18/2019	Yes	Paid
05/29/2019	8	8	BUTLER, RYAN J (970073)		Journey person		\$0.00	Unknown	09/23/2019	5/23/2019 - 5/29/2019	6/4/2019	Yes	Paid
05/22/2019	4	4	JONES, RODNEY (809004)		Journey person		\$0.00	Unknown	09/23/2019	5/16/2019 - 5/22/2019	6/4/2019	Yes	Paid
05/22/2019	4	4	ANDERSON, MAURICE (997320)		Journey person		\$0.00	Unknown	09/23/2019	5/16/2019 - 5/22/2019	6/4/2019	Yes	Paid
04/17/2019	8	8	ROBINSON, DEVON (1145978)		Journey person		\$0.00	Unknown	09/23/2019	4/11/2019 - 4/17/2019	5/1/2019	Yes	Paid
04/17/2019	10.25	10.25	ANDERSON, MAURICE (997320)		Journey person		\$0.00	Unknown	09/23/2019	4/11/2019 - 4/17/2019	5/1/2019	Yes	Paid
03/20/2019	16	16	ANDERSON, MAURICE (997320)		Journey person		\$0.00	Unknown	09/23/2019	3/14/2019 - 3/20/2019	3/29/2019	Yes	Paid
03/20/2019	3	3	REID, BRYANT O (1146012)		Journey person		\$0.00	Unknown	09/23/2019	3/14/2019 - 3/20/2019	3/29/2019	Yes	Paid

EXHIBIT 3



March 3, 2023

Mr. Robert Katuna
Sheet Metal Workers' Local Union 28 Benefit Funds
195 Mineola Blvd.
Mineola, NY 11501

RE: **REVISED** Compliance Audit of NY Chutes LLC for the Sheet Metal Workers' Local Union 28 Benefit Funds.
(Employer #001868)

Dear Mr. Katuna:

Enclosed you will find a copy of our revised compliance audit detailing discrepancies we noted during our review of the payroll records of NY Chutes LLC for the period of January 2019 through December 2020.

If there are any questions concerning the audit, please refer them to me.
Sincerely,

Calibre CPA Group, PLLC

Enclosure

Cc: Glen Camisa
Teri Brauner



March 3, 2023

Board of Trustees
Sheet Metal Workers' Local Union 28 Benefit Funds

We have applied certain procedures, as discussed below, to the payroll records of NY Chutes LLC, a contributing employer to the Sheet Metal Workers' Local Union 28 Benefit Funds for the period of January 2019 through December 2020.

The purpose of our review was to assist you in determining whether contributions to the Trust Fund are being made in accordance with the collective bargaining agreement in effect and with the Trust Agreement of the Fund. The propriety of the contributions is the responsibility of the employer's management.

Our procedures included a review of the pertinent provisions of the collective bargaining agreements and compared underlying employer payroll records to the Fund's contribution records. The employer records we reviewed included payroll journals, individual earning records, payroll tax returns, contribution reports, job classifications, and general disbursements records as appropriate. The procedures are performed on a test basis and may be expanded if the results so warrant. The scope of this engagement is limited to records made available by the employer and would not necessarily disclose all exceptions in employer contributions to the Fund. Any compensation paid to employees not disclosed to us or made part of the written record was not determinable by us and was not included in our review.

Our procedures related to a review of the employer's payroll records only and did not extend to any financial statements of the contributing employer. The procedures were substantially less in scope than an audit of financial statements of the contributions employer, the objective of which is the expression of an opinion on the contribution employer's financial statements. Accordingly, no such opinion is expressed.

The exceptions to employer contributions noted are detailed on the accompanying schedules.

Calibre CPA Group, PLLC



March 3, 2023

Board of Trustees
Sheet Metal Workers' Local Union 28 Benefit Funds

COMPLIANCE AUDIT REPORT

Employer Name: NY Chutes LLC

Employer Number: 1868

Field work Started: March 4, 2022

Period Examined: January 2019 through December 2020

Contact: Julianne Fox
Title: Owner

Location of Employer: 5 Honeyman Road
Lebanon, NJ 08833

Location of Audit: Calibre CPA Group, PLLC
Bethesda, MD 20814

Email Address: nychutes@gmail.com

Summary of Compliance Audit Findings:

Findings were noted due to the employer failing to report employees performing covered work as well as using independent contractors to perform covered work. The employer reviewed the draft findings and disagreed with results. The employer disagreed because the employees were non union employees working on non union jobs however (per her email) they were performing covered work. Initial findings remain.



March 3, 2023

Board of Trustees
Sheet Metal Workers' Local Union 28 Benefit Funds

COMPLIANCE AUDIT REPORT (cont'd)

1) Test Sample Size and Procedures:

The auditor tested payroll, bargaining units, and general ledger to complete the audit.

2) Hire and Term Test Sample Size and Procedures:

Auditor was provided payroll and noted the employees who were reported had been reported from date of hire.

3) Employee ID Test Sample and Procedures:

Auditor was provided Form W-2s during the audit period and noted everyone performing covered work had been reported.

4) 1099 and General Ledger Test Sample and Procedures:

Per the contact, no 1099s were issued during the audit period. The auditor reviewed the cash disbursement report and noted independent contractors had been used to perform covered work.

5) Was a current copy of the surety bond or equivalency letter of credit provided?

A surety bond was not provided by the employer.



6) Management Notes

On March 3, 2023 revisions were made as requested from Fund due to additional information being provided. The Local and National Funds advised the work performed by Edwin Rivera as well as Christian Garcia was not covered work and therefore those employees were removed. The employees in 2018 (Jerson, Buona, Christian D) were removed due to no additional information showing they performed covered work. Original email from employer stated they did the same work as Edwin Rivera and therefore they were removed for this revision. Lastly, the invoice for Wilkinson Hi-Rise was reviewed from 2019. The invoice states NY Chutes will provide labor only with an invoice amount of \$35,000 for the labor. Auditor divided this invoice amount by the Journeyman wage rate at the time which calculated to 636.71 hours. In 2019 the employer only reported 79.25 hours and therefore Auditor picked up the remaining 557.46 hours under a Maurice Anderson as a placeholder for now.

Name/SSN/Title
Julliane Fox



April 21, 2022

Julianne Fox
NY Chutes LLC
5 Honeyman Road
Lebanon, NJ 08833

RE: Contributing Employer Compliance Testing of NY Chutes LLC for Sheet Metal Workers'
Local Union 28 Benefit Funds
(Employer #1868)

Dear Mrs. Fox:

We have completed our review of the payroll records of NY Chutes LLC. To the extent of our testing, we have confirmed that contributions were remitted to the above fund(s) utilizing the proper contribution basis and rates for the period July 2016 through December 2020.

Attached is a copy of our compliance audit report, indicating the discrepancies we noted. We ask that you review the compliance audit report and advise us of any adjustments or challenges to our findings with specificity.

Please contact us within five days of receiving this report April 28, 2022.

If we do not hear from you by the above date, we will assume you agree with our findings. We are required to submit our report, along with any employer input, to the Fund's Administrative Manager within a reasonable period of time after issuance to the employer. The Fund will review the report and may request additional information.

Given the limits of our testing, the report does not establish that all contributions and remittance data, other than as noted, were properly and fully remitted and reported.

If there are any questions with regards to this report, please contact me at 202.721.1781 or pparker@calibrecpa.com. We wish to thank you for your assistance during our visit to your office.

Sincerely,

Perry Parker

Perry Parker

SHEET METAL WORKERS' LOCAL UNION 28 BENEFIT FUNDS
PAYROLL AUDIT SUMMARY

Employer: NY Chutes LLC
Employer Number: 141409
Audit Period: July 2016 through December 2020

<u>Year</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>TOTALS</u>
VAC	\$0.00	\$0.00	\$0.00	\$2,686.96	\$494.00	\$3,180.96
H&W	\$0.00	\$0.00	\$0.00	\$7,040.72	\$1,023.03	\$8,063.75
ANN	\$0.00	\$0.00	\$0.00	\$3,902.22	\$613.70	\$4,515.92
S.U.B.	\$0.00	\$0.00	\$0.00	\$551.89	\$80.19	\$632.08
J.L.M.	\$0.00	\$0.00	\$0.00	\$1,009.00	\$146.61	\$1,155.61
SCHLR	\$0.00	\$0.00	\$0.00	\$11.15	\$1.62	\$12.77
PEN	\$0.00	\$0.00	\$0.00	\$2,491.85	\$362.07	\$2,853.92
ED	\$0.00	\$0.00	\$0.00	\$518.44	\$83.33	\$601.77
ASMT/BLDG/PAL	\$0.00	\$0.00	\$0.00	\$1,644.51	\$242.93	\$1,887.44
Total Underpayments	<u><u>\$0.00</u></u>	<u><u>\$0.00</u></u>	<u><u>\$0.00</u></u>	<u><u>\$19,856.73</u></u>	<u><u>\$3,047.48</u></u>	<u><u>\$22,904.21</u></u>

Explanation of Findings:
A. Failed to report employee in a covered job classification.

SHEET METAL WORKERS' LOCAL UNION 28 BENEFIT FUNDS

EMPLOYER NUMBER: 141409
LOCAL UNION: 28
AREA: Y00
INDUSTRY CODE: 01
CONTRACT #: 0282501

PAYROLL AUDIT PERIOD: January 2019 through December 2020
EMPLOYER NAME: NY Chutes LLC
EMPLOYER ADDRESS: 5 Honeyman Road Lebanon, NJ 08833
CONTACT & PH#: Julianne Fox 804-218-6410
EMAIL: nychutes@gmail.com

PRIMARY EXPLANATION OF FINDINGS:
Z. Failed to report additional hours from Wilkinson Hi-Rise Job.

YEAR: 2019

SCHEDULE OF HOURS

							Hours	Rates	Rates										Amounts Owed											
NAME	SSN	Job Class	Hire	Term	NOTE	Date	Variance	As of	VAC	H&W	ANN	S.U.B.	J.L.M.	SCHLR	PEN	ED	ASMT/BLDG/PAL	VAC	H&W	ANN	S.U.B.	J.L.M.	SCHLR	PEN	ED	ASMT/BLDG/PAL	Total Due			
Anderson, Maurice		J			Z	3/15/2019	557.46	8/2/2018	\$4.82	\$12.63	\$7.00	\$0.99	\$1.81	\$0.02	\$4.47	\$0.93	\$2.95	\$2,686.96	\$7,040.72	\$3,902.22	\$551.89	\$1,009.00	\$11.15	\$2,491.85	\$518.44	\$1,644.51	\$19,856.73			
							557.46											\$2,686.96	\$7,040.72	\$3,902.22	\$551.89	\$1,009.00	\$11.15	\$2,491.85	\$518.44	\$1,644.51	\$19,856.73			

Wilkenson Hi-Rise Estimation of Hours

Invoice Amount	\$	35,000.00
Journeyman wage rate (8/2/2018)	\$	54.97
Total Hours		636.71
Reported Hours		79.25
Outstanding Hours		557.46

SHEET METAL WORKERS' LOCAL UNION 28 BENEFIT FUNDS

EMPLOYER NUMBER: 141409
 LOCAL UNION: 28
 AREA: Y00
 INDUSTRY CODE: 01
 CONTRACT #: 0282501

PAYROLL AUDIT PERIOD: January 2019 through December 2020
 EMPLOYER NAME: NY Chutes LLC
 EMPLOYER ADDRESS: 5 Honeyman Road Lebanon, NJ 08833
 CONTACT & PH#: Julianne Fox 804-218-6410
 EMAIL: nychutes@gmail.com

PRIMARY EXPLANATION OF FINDINGS:
 O. Employer used subcontractor to perform covered work.

SCHEDULE OF SUBCONTRACTORS PERFORMING COVERED WORK

YEAR: 2020

CONTRACTOR NAME	FEIN	NOTE	WAGE RATE	AMOUNT FROM INVOICE/1099/GL	TRANSACTION/ INVOICE DATE	INVOICE #	HOURS ON INVOICE?	HOURS	How were hours determined?
PeopleReady		O	\$ 56.61	\$ 210.00	4/3/2020	N/A	No	4.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 56.61	\$ 200.00	4/24/2020	N/A	No	4.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 56.61	\$ 704.00	5/15/2020	N/A	No	13.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 56.61	\$ 352.00	6/12/2020	N/A	No	7.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 56.61	\$ 200.00	6/12/2020	N/A	No	4.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 56.61	\$ 704.00	8/18/2020	N/A	No	13.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 56.61	\$ 200.00	9/3/2020	N/A	No	4.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 57.61	\$ 600.00	11/13/2020	N/A	No	11.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 57.61	\$ 200.00	11/20/2020	N/A	No	4.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 57.61	\$ 200.00	11/27/2020	N/A	No	4.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 57.61	\$ 400.00	12/16/2020	N/A	No	7.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
PeopleReady		O	\$ 57.61	\$ 300.00	12/30/2020	N/A	No	6.00	Dividing the Journeyman wage rate by the Amount from Cash disbursement report.
HOURS								81.00	

Fund	Rate as of			
	8/1/2019	7/23/2020	10/29/2020	TOTAL
VAC	\$6.00	\$6.00	\$6.25	\$494.00
H&W	\$12.63	\$12.63	\$12.63	\$1,023.03
ANN	\$7.30	\$7.30	\$8.00	\$613.70
S.U.B.	\$0.99	\$0.99	\$0.99	\$80.19
J.L.M.	\$1.81	\$1.81	\$1.81	\$146.61
SCHLR	\$0.02	\$0.02	\$0.02	\$1.62
PEN	\$4.47	\$4.47	\$4.47	\$362.07
ED	\$0.93	\$0.93	\$1.18	\$83.33
ASMT/BLDG/PAL	\$3.11	\$2.77	\$3.01	\$242.93
Totals	\$37.26	\$36.92	\$38.36	\$3,047.48